

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 807

Introduced by Senator Benoit

February 27, 2009

An act to amend ~~Section 16000 of the Business and Professions Sections 226.7 and 512 of the Labor Code~~, relating to ~~business licenses employment~~.

LEGISLATIVE COUNSEL'S DIGEST

SB 807, as amended, Benoit. ~~Business licenses-Employment: meal and rest periods.~~

Under existing law an employer is prohibited from requiring an employee to work during a meal or rest period mandated by an applicable order of the Industrial Welfare Commission and is required to pay a nonexempt employee one additional hour's pay at the employee's regular rate of compensation upon failure to provide the mandated meal or rest period.

This bill would provide that the payment to the employee for failure to provide a mandated meal or rest period is a statutory penalty and does not constitute additional wages to the employee. The bill also would clarify that an employer provides a meal or rest period by making one available to the employee without interfering with its use.

Existing law requires an employer to provide an employee who works more than 5 hours with a meal period of not less than 30 minutes, unless the employee's total daily work period does not exceed 6 hours, in which case it may be waived by mutual agreement.

This bill would provide that this meal period may commence at any time before the start of the 6th hour of work.

~~Existing law authorizes the legislative body of an incorporated city to license businesses carried on within its jurisdiction and to set license fees as specified.~~

~~This bill would make technical, nonsubstantive changes to this provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 226.7 of the Labor Code is amended to*
2 *read:*

3 226.7. (a) ~~No~~An employer shall *not* require ~~any~~ an employee
4 to work during ~~any~~ a meal or rest period mandated by an applicable
5 order of the Industrial Welfare Commission.

6 (b) If an employer fails to provide *to* an employee a meal period
7 or rest period in accordance with an applicable order of the
8 Industrial Welfare Commission, the employer shall pay *a penalty*
9 *to the employee in an amount equal to one additional hour of pay*
10 at the employee's regular rate of compensation, *notwithstanding*
11 *the duration of the meal or rest period*, for each work day that the
12 meal or rest period is not provided. *This statutory penalty is not*
13 *restitutionary in nature and shall not constitute additional wages*
14 *to the employee.*

15 (c) *For purposes of this section, an employer provides a meal*
16 *or rest period by making one available to the employee without*
17 *interfering with its use.*

18 *SEC. 2. Section 512 of the Labor Code is amended to read:*

19 512. (a) An employer ~~may~~ shall not employ an employee for
20 a work period of more than five hours per day without providing
21 the employee with a meal period of not less than 30 minutes,
22 *commencing at any time before the start of the sixth hour of work*,
23 except that if the total work period per day of the employee is no
24 more than six hours, the meal period may be waived by mutual
25 consent of both the employer and employee. An employer may
26 not employ an employee for a work period of more than 10 hours
27 per day without providing the employee with a second meal period
28 of not less than 30 minutes, except that if the total hours worked
29 is no more than 12 hours, the second meal period may be waived

1 by mutual consent of the employer and the employee only if the
2 first meal period was not waived.

3 (b) Notwithstanding subdivision (a), the Industrial Welfare
4 Commission may adopt a working condition order permitting a
5 meal period to commence after six hours of work if the commission
6 determines that the order is consistent with the health and welfare
7 of the affected employees.

8 (c) Subdivision (a) does not apply to an employee in the
9 wholesale baking industry who is subject to an Industrial Welfare
10 Commission wage order and who is covered by a valid collective
11 bargaining agreement that provides for a 35-hour workweek
12 consisting of five seven-hour days, payment of ~~1 and ½~~ *one and*
13 *one-half times* the regular rate of pay for time worked in excess
14 of seven hours per day, and a rest period of not less than 10 minutes
15 every two hours.

16 (d) If an employee in the motion picture industry or the
17 broadcasting industry, as those industries are defined in Industrial
18 Welfare Commission Wage Orders 11 and 12, is covered by a
19 valid collective bargaining agreement that provides for meal
20 periods and includes a monetary remedy if the employee does not
21 receive a meal period required by the agreement, then the terms,
22 conditions, and remedies of the agreement pertaining to meal
23 periods apply in lieu of the applicable provisions pertaining to
24 meal periods of subdivision (a) of this section, Section 226.7, and
25 Industrial Welfare Commission Wage Orders 11 and 12.

26 ~~SECTION 1. Section 16000 of the Business and Professions~~
27 ~~Code is amended to read:~~

28 ~~16000. (a) The legislative body of an incorporated city may,~~
29 ~~in the exercise of its police power, and for the purpose of~~
30 ~~regulation, as herein provided and not otherwise, license any kind~~
31 ~~of business not prohibited by law transacted and carried on within~~
32 ~~the limits of its jurisdiction, including all shows, exhibitions, and~~
33 ~~lawful games, and may fix the rates of the license fee and provide~~
34 ~~for its collection by suit or otherwise. Any legislative body,~~
35 ~~including the legislative body of a charter city, that fixes the rate~~
36 ~~of license fees pursuant to this subdivision upon a business~~
37 ~~operating both within and outside the legislative body's taxing~~
38 ~~jurisdiction, shall levy the license fee so that the measure of the~~
39 ~~fee fairly reflects that proportion of the activity actually carried~~
40 ~~on within the taxing jurisdiction.~~

~~(b) No license fee levied pursuant to subdivision (a) that is measured by the licensee's income or gross receipts, whether levied by a charter or general law city, shall apply to any nonprofit organization that is exempted from taxes by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, or to any minister, clergyman, Christian Science practitioner, rabbi, or priest of any religious organization that has been granted an exemption from federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code or a successor to that section.~~

~~(c) Before a city, including a charter city, issues a business license to a person to conduct business as a contractor, as defined in Section 7026, the city shall verify that the person is licensed by the Contractors' State License Board.~~